

Montana Wood
Products Revolving Loan Fund (WP RLF)
Program

Application Guidelines for EDA WP RLF Funding

MONTANA DEPARTMENT OF COMMERCE
MONTANA OFFICE OF TOURISM AND BUSINESS
DEVELOPMENT DIVISION
COMMERCE LOAN FUND

Effective August 2010

Last updated May 2019

STATE OF MONTANA DEPARTMENT OF COMMERCE

APPLICATION GUIDELINES FOR EDA WP RLF FUNDING

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INTRODUCTION

In 2009 the Montana Legislature approved HB 669 which created the Montana Distressed Wood Products Industry Revolving Loan program to respond to the sudden and severe economic downturn of the national economy, and the lowered demand for wood products. The Montana Distressed Wood Products Industry Recovery and Stabilization (WPIRS) Program was a federally and state-funded, statewide loan program designed to help businesses in the wood products industry retain or create jobs. The WPIRS program targeted areas of the state where timber jobs were most threatened, particularly in counties with lumber mills and similar facilities.

HB645 allocated \$7.5 million of Montana Reinvestment Act funding for the WPIRS programs. \$4.8 million was used to establish the State WPIRS program and \$2.7 million was designated to be used as match required by a \$2.7 million American Recovery and Reinvestment Act (ARRA) grant received from the U.S. Department of Commerce, Economic Development Administration (EDA) to establish the EDA WPIRS program.

The \$9.8 million in funds originally allocated for loans in 2009 have been disbursed.

Due to the revolving nature of the programs, both the EDA and State Montana Distressed Wood Products Revolving Loan Fund (WP RLF) Programs continue to be available for Montana's wood products industries with funds available for lending. Information regarding the current EDA WP RLF and State WP RLF programs, including application guidelines and available balances can be found at: wprlf.mt.gov

These guidelines explain, among other things, what entities are eligible for under the WP RLF programs, what projects are eligible for the WP RLF programs, how to apply for WP RLF loans, and how WP RLF loans will be administered by the Department. The Department may approve loans that depart from these guidelines if, in the sole discretion of the Department, it is in the best interest of the Department and the loan applicant. The Department reserves the right to amend these guidelines, at its sole discretion, at any time without notice during the term of the WP RLF programs.

Potential applicants are encouraged to contact the MDOC to discuss their proposed project with WP RLF staff.

Alternative accessible formats of this document will be provided upon request. If you need this document in an alternative format, such as large print, Braille, audiotape, or computer diskette, please contact:

**Montana Wood Products
Revolving Loan Program (WP RLF)
(For EDA WP RLF and State WP RLF Funding)**

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I. 2009 MONTANA WOOD PRODUCTS REVOLVING LOAN FUND PROGRAM

EDA WP RLF Program

The Montana Wood Products Revolving Loan Fund (WP RLF) Program received \$2,700,000 from the U.S. Department of Commerce, Economic Development Administration (EDA); \$1,525,862.24 from the U.S. Department of Housing and Urban Development (HUD), Small Cities Program; and \$7,500,000 from the State of Montana general fund for program lending activities and administration.

These application guidelines address requirements for the EDA WP RLF funding program. For applications requesting funding from the State WP RLF or CDBG WP RLF program please refer to the most current State WP RLF application guidelines or CDBG WP RLF application summary, or contact WP RLF program staff.

The following table summarizes the estimated amount of WP RLF funding available and distribution of funds for FFY 2009.

Funding Amounts

Total WP RLF Funding, FFY 2009	
EDA WP RLF Fund	
EDA	\$2,700,000
State General Fund (HB 645)	\$2,700,000
Less Funding for Administration	<u>- 400,000</u>
Total Available for Lending	\$5,000,000
CDBG WP RLF Fund	
CDBG Recovery Fund	\$1,525,862.24
Less Funding for Administration	<u>- 30,662.78</u>
Total Available for Awards	\$1,495,199.46
State WP RLF Fund	
State General Fund (HB 645)	<u>\$4,800,000</u>
Total Available for Lending	\$4,800,000

As the WP RLF program is comprised of multiple sources of funding, eligible applicants and requirements vary depending upon the type of funding requested. Applications are accepted on a continuous basis based upon available funding.

For EDA WP RLF funding, the maximum funding amount is \$20,000 per assisted created or retained job. No proposal(s) for an assisted business in any calendar year may exceed \$2 million dollars in funding requests from any WP RLF program, or combination of WP RLF programs.

Businesses must prepare a business plan and meet required thresholds, including providing a **2:1 dollar leverage**. Project applications are reviewed by Montana Department of Commerce (MDOC) staff and a Loan Review Committee that make recommendations to the Director for a final funding decision.

Potential applicants are encouraged to contact the Montana Department of Commerce (MDOC) to discuss their proposed project with WP RLF staff.

Application Deadlines

Applications will be accepted on an open-cycle basis based upon available funding. Please contact WP RLF staff for availability of funding.

Purpose

The WP RLF Program is designed to place highest priority on projects that will have the greatest potential for retaining and creating long-term employment opportunities for Montanans, and that provide long-term economic benefits to Montana communities.

The program is designed to assist businesses by making fixed-rate financing available to them at reasonable interest rates, given the risk of the project. An appropriate interest rate would include competitive market rates or a risk-based interest rate.

It is the intention that WP RLF funds be used when a funding gap exists, and alternative sources of private financing are not adequate. WP RLF should complement conventional business financing and other business financing programs. The EDA WP RLF program can provide flexible terms, and staff will work with an assisted business to determine the most suitable loan package. The program is also designed to complement other MDOC financing programs administered by the Montana Office of Tourism and Business Development Division and the Montana Board of Investments.

A. ELIGIBLE APPLICANTS

Eligible applicants are individuals, including private contractors related to the wood products industry, and wood product businesses. Companies that would be eligible for assistance include but are not limited to sawmills, plywood plants, paper and linerboard manufacturers, bark and by-product related companies, round-wood producers, wood

chip processors, and new and innovative manufacturers and processors of wood products.

Names of all applicant businesses and principle owners will be submitted to the federal Excluded Parties List System (EPLS) for status of debarment from participating in a federally funded project. Names of all applicant businesses and principle owners will also be submitted to the State of Montana's Debarred Vendors list for status of debarment from participating in a state funded project. Only those businesses and individuals that are not listed will be eligible to receive funding under these guidelines.

B. ELIGIBLE ACTIVITIES

NOTE: Communication with WP RLF staff during the onset of project planning helps ensure a complete application for an eligible activity that meets program requirements. Please contact WP RLF staff for guidance and clarification on program requirements.

1. Loans to Businesses

Typical eligible activities for assistance to businesses include primarily working capital and equipment loans, and other activities that do not include contracted labor and construction.

The WP RLF Program is designed to place highest priority on projects that will have the greatest potential for retaining and creating long-term employment opportunities for Montanans, and that provide long-term economic benefits to Montana communities.

Repayments from EDA WP RLF Loans

Repayments from EDA WP RLF will be submitted to the MDOC for continued relending activities in the EDA WP RLF program.

General Policies on Loan Requests

All loans made to nonprofit organizations and for-profit businesses are subject to the following guidelines:

- **Loan Terms**

The terms of the loan should be consistent with the projected use of funds and individual project needs. For example, terms for financing machinery and equipment should generally be between 5 and 10 years. Working capital loans should be limited to 7 years. For buildings and real estate, terms are generally between 15 to 20 years. If the applicant requests a deferral of repayments and the Department accepts it, the term of the loan will include the deferred period. For example, a loan with a 10-year term with a 1-year deferral period has a total term of 10 years, not 11.

- **Deferral of Payments**

Repayments of principal may be deferred up to 1 year. The projected cash flow of the business and the defined financial gap must support the need for a deferral. The Department may require interest payments be made during the period of deferral.

- **Loan Security**

All loans must be secured with fixed assets (i.e., land, buildings, and capital equipment), personal guarantees, or any other reasonable source of available collateral. EDA WP RLF funds may be placed in a subordinated security position to other lenders involved in the project however the Department will seek the position that is the most advantageous to the Department. Applicants must include documentation for the value of collateral offered for security and a description of all security positions held by lenders and any liens that may apply to the collateral (tax liens, mechanics liens, or other liens). The Department will negotiate with the business for the most secure position that is reasonably available, regardless of the proposed use of the EDA WP RLF funds.

- **Interest Rate**

EDA regulations require that the minimum interest rate the RLF can charge is four (4) percentage points below the lesser of the current money center prime rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event may the interest rate be less than four (4) percent, or 75 percent of the prime interest rate listed in the Wall Street Journal. However, should the prime interest rate listed in the Wall Street Journal exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the assisted business to implement its financing strategy. (See 13 C.F.R. § 307.15(c).)

- **Disbursement**

No funds will be disbursed until all start-up conditions are met, the environmental checklist is completed, public hearing requirements are met (for construction projects, if applicable), and the EDA WP RLF staff authorizes a transfer of funds.

- **Non-Compliance with Required Reporting**

A loan will be considered in default if the assisted business does not comply with MDOC reporting requirements.

- **Loan Payments**

All loan payments will be collected through Automatic Clearing House (ACH) transactions. The MDOC will provide assisted businesses with a bank authorization form for ACH payments.

C. INELIGIBLE ACTIVITIES

The following activities would not provide sufficient public benefit and would not be

approved for assistance with EDA WP RLF funds. Activities may not consist of or include any of the following:

1. Assisting a business to create or retain jobs that would cost more than \$20,000 in EDA WP RLF funds per job.
2. Acquire an equity position in a private business;
3. Subsidize interest payments on an existing loan;
4. Provide the equity contribution required of borrowers under other Federal loan programs;
5. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for the RLF financing is sufficiently justified and documented in the loan write-up.
6. Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF;
7. Refinance existing debt unless there is sound justification and the MDOC sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender, or to lower the cost of financing to a borrower; or to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan.
8. Administrative expenses. No part of the EDA WP RLF funding request may include costs for grant application preparation or project administration.

D. MAXIMUM AWARD AMOUNT

For EDA WP RLF funding, the maximum funding amount is \$20,000 per created or retained job. No proposal(s) for an assisted business in any calendar year may exceed \$2 million dollars in funding requests from any WP RLF program, or combination of WP RLF programs.

- **A loan recipient may apply for another loan 2 years or more after the date the previous loan was approved.**

Applicants should also be aware that it may take two months or longer before funds are disbursed after a decision to provide a loan has been made. This delay occurs because several activities must take place in the interim. For example, the loan agreement between the business and the Department must be prepared, a review of environmental factors must be conducted, and all the details for assuring proper management of the project and the expenditures of loaned federal funds must be finalized. Unless prior written approval is given, it is absolutely essential that the business does not incur costs

or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date of the final execution of the loan agreement.

E. LEVERAGED FUNDS

To be eligible for consideration, an applicant must assure the participation of:

- At least two non-WP RLF dollar for each dollar of EDA WP RLF funds requested (a **2:1** leveraged ratio). The non-WP RLF funds may come from a variety of sources, such as new investment by the business to be assisted, bank loans, or other private funds. Although only private funds count towards required leverage, the Department also welcomes other leverage. Loans to be repaid to a state or federal loan program, or government grant, are also considered leverage. Applicants should ensure that documentation committing the non-WP RLF dollars states that the commitment is contingent on the receipt of EDA WP RLF funds.

Ideally 100% of the required leveraged funds will be met by new cash in the form of new cash equity, new loans, or other new private funds. Leveraged funds should be committed and documented at the time of application and approval.

To be classified as leverage, private investment must be made within twelve (12) months prior to approval of an EDA WP RLF award, as part of the same business development project and may include at the Department's sole discretion:

1. Capital invested by the borrower or others;
2. Financing from private entities; or
3. The non-guaranteed portion and ninety (90) percent of the guaranteed portions of US Small Business Administration 7(A) loans and 504 debenture loans.

The following will not be considered as leverage:

- Existing assets;
- In-kind services;
- Other costs incurred prior to the application date to be paid for with EDA WP RLF funds;
- The refinancing of existing debt;
- Projected operating cash flow;
- Existing equity;
- Existing bank line of credit amounts (Note: Increases in lines of credit contingent upon the receipt of EDA WP RLF funds may be accepted.)

➤ It is absolutely essential that the assisted business not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date that all required start-up conditions, including signing the loan agreement, are satisfied by the recipient and approved in writing by the MDOC. It should be clear that expenses incurred by the assisted business, are incurred at their own risk. Unless prior written approval is given, it is absolutely essential that the business does not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date of the final execution of the loan agreement.

F. REPORTING REQUIREMENTS

Stimulus Funds

The applicant understands and agrees that, if funded, the project to be completed as described in the application will be funded by federal and/or state recovery and reinvestment funds (“Recovery Funds”), and that the recipient of EDA WP RLF funding must report information as required by applicable federal and state law for itself and if applicable to the project, all contractors, subcontractors, and sub-recipient entities. Types of reports and schedule for submittal are described below.

Monthly

The assisted business, no later than the first Friday of each month during the two (2) year period of activity tracking, must submit:

- (1) Hiring and retention forms (**Appendix C-a**), and
- (2) Payroll reports verifying current employees, date of hire, hourly wage, and number of hours worked

In addition to the above reports, for projects involving construction, no later than the first Friday of each month during the two (2) year period of activity tracking, the assisted business must report, at a minimum, for itself and all contractors, subcontractors, and any other parties, the following information:

- (1) The dollar amount of all contractor invoices;
- (2) The supplies delivered and the services performed;
- (3) An assessment of the completion status of the work;
- (4) An estimate of the number of jobs created and the number of jobs retained as a result of the EDA WP RLF Funds:
 - (i) “Jobs created” means the cumulative new positions created and filled, or previously existing unfilled positions that are filled, for each project, as a running total over the life of the project, expressed as “full time equivalent” (FTE), calculated cumulatively as all hours worked (jobs created cumulative work hours) divided by the total number of hours in a full time schedule, as defined by the Contractor.

- (ii) "Jobs retained" means the cumulative previously existing filled positions that are saved/retained for each project, as a running total over the life of the project, expressed as FTE, calculated cumulatively as all hours worked (jobs saved cumulative work hours) divided by the total number of hours in a full time schedule, as defined by the Contractor.
- (iii) The Contractor must report the FTE (job counts should be converted to full-time equivalents), cumulative work hours, and total number of hours in a full-time schedule, as defined by the Contractor, for both jobs created and retained.
- (iv) Temporary construction jobs should also be converted to annualized full-time equivalents. For example, 20 full-time jobs on a three-month project count as 5 full-time equivalent annualized jobs;
- (5) Weekly payroll reports for the monthly time period; and
- (6) Name and physical location of all contractors, subcontractors, and sub-recipient entities engaged in any of the activities described in the assisted business' EDA WP RLF application.

Please contact the MDOC for more information about additional requirements if considering using EDA WP RLF funds for a construction project.

Quarterly

For all EDA WP RLF funded projects, the following are quarterly reports due for calendar quarters ending March, June, September, and December. The reports are due to the Department no later than 15 days after the close of each calendar quarter.

- (1) Project progress reports, and
- (2) Quarterly financial status reports.

Project Progress Reports During the two (2) year period of activity tracking, the assisted business must submit quarterly project progress reports to the Department. These reports should describe the status of the project activities, including, at a minimum, the percentage complete, costs incurred, and funds remaining. The report must also describe any significant problems encountered in carrying out the project.

Financial Reports During the two (2) year period of activity tracking, the assisted business must submit quarterly financial reports that at a minimum include a current balance sheet, and a current profit and loss statement.

Annually

Financial Reports After the two (2) year period of activity reporting, assisted businesses must submit annual financial reports until the date of final loan payoff.

A loan will be considered in default if the assisted business does not comply with MDOC reporting requirements.

G. CIVIL RIGHTS REQUIREMENTS

Each applicant must agree to comply with all applicable State and federal laws and regulations in implementing their proposed EDA WP RLF project, if selected for funding. Applicants should carefully review these requirements and consider their potential impact when designing their EDA WP RLF project. Listed below are the most important federal regulations that apply to projects using EDA WP RLF funds. They cover a wide range of issues including labor standards, employment practices, financial procedures, and civil rights, many of which can have an effect on the costs or complexity of project implementation. Each federal law or regulation is annotated to give the applicant a general understanding of the requirements that must be met. Since this is a brief summary and not intended to be a comprehensive description of each law, businesses who have any questions or concerns regarding the applicability of these requirements should contact the Montana Department of Commerce for guidance.

The assisted business will comply with the following civil rights requirements:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (proscribing discrimination on the basis of race, color, or national origin), and EDA's implementing regulations found at 15 CFR part 8.

42 U.S.C. 3123 (proscribing discrimination on the basis of sex), and EDA's implementing regulations found at 15 CFR 8.7 through 8.15.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the basis of disabilities), and EDA's implementing regulations found at 15 CFR part 8b.

The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. Seq.) (proscribing discrimination on the basis of age), and EDA's implementing regulations found at 15 CFR part 20, and

Davis-Bacon Act, as amended (40 U.S.C. et seq.), Section 2; June 13, 1934, as amended (48 Stat. 948.40 U.S.C. 276(c)), popularly known as the Copeland Anti-Kickback Act. The Act mandates that all laborers and mechanics be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except "permissible" salary deductions, the full amounts due at the time of payments, computed at wage rates not less than those contained in the wage determination issued by the U.S. Department of Labor. Weekly compliance statements and payrolls are required to be submitted to the federally-funded recipient by the contractor;

Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). According to the Act, no contract work may involve or require laborers or mechanics to work in excess of eight hours in a calendar day, or in excess of 40 hours in a work week, unless compensation of not less than one and one-half times the basic rate is paid for the overtime hours. If this Act is violated, the contractor or subcontractor is liable to any

affected employee for unpaid damages as well as to the United States for liquidated damages; and

Federal Fair Labor Standards Act, (29 U.S.C.S. 201 et seq.). The act requires that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed workweek.

The business will comply with other state and federal statutes, regulations, and Executive Orders as applicable.

H. ENVIRONMENTAL REQUIREMENTS

All EDA WP RLF projects are subject to the National Environmental Policy Act and the Montana Environmental Policy Act. Both laws seek to avoid adverse impacts on the environment by mandating careful consideration of the potential impacts on any development assisted with federal funds or approved by a state agency. In addition, EDA WP RLF projects are subject to many other state and federal environmental laws. Applicants are encouraged to be sensitive to potential environmental impacts while their EDA WP RLF projects are first being considered and planned to avoid problems that could delay or even prevent a project from being implemented.

The Full Environmental Checklist will be completed by WP RLF or MDOC staff, or other MDOC designated party prior to loan closing. **For infrastructure and construction projects, the Full Environmental Checklist and site-specific environmental checklist(s) must be completed by a licensed professional engineer at the expense of the applying business.**

ENVIRONMENTAL REQUIREMENTS

The following are required environmental requirements for all EDA WP RLF funding recipients:

Air Quality

Clean Air Act (42 U.S.C. 7401, et seq.) which prohibits engaging in, supporting in any way or providing financial assistance for, licensing or permitting, or approving any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards.

Environmental Impact

- Section 104(f) of the Housing and Community Development Act of 1974, as amended through 1981. This section expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act be most effectively implemented in connection with the expenditure of funds

under" the Act. Such other provisions of law which further the purpose of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to Section 104(f) of the Act and contained in 24 CFR Part 58; and

- The National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, et seq. and 24 CFR Part 58). The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety or other undesirable and unintended consequences. Environmental review procedures are a necessary part of this process.

EPA List of Violating Facilities

The assisted business will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities and that it will notify the Department of Commerce of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by EPA.

Farmlands Protection

Farmlands Protection Policy Act of 1981 (7 U.S.C. 4202, et seq.) and any applicable regulations (7 CFR Part 658) which established compliance procedures for any federally assisted project which will convert farmlands designated as prime, unique or statewide or locally important, to non-agricultural uses.

Floodplain Management and Wetlands Protection

- Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
- Executive Order 11988, May 24, 1978: Floodplain Management (42 F.R. 26951, et seq.). The intent of this Executive Order is to (1) avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplain and (2) avoid direct or indirect support of floodplain development wherever there is a practical alternative. If an assisted business proposes to conduct, support or allow an action to be located in the floodplain, the assisted business must consider alternatives to avoid adverse effects and incompatible involvement in the floodplains. If sitting in a floodplain is the only practical alternative, the assisted business must, prior to taking any action: (1) design or modify its actions in order to minimize a potential harm to the floodplain;

and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in a floodplain; and

- Executive Order 11990, May 24, 1977: Protection of Wetlands (42 F.R. 26961, et seq.). The intent of this Executive Order is to avoid adverse impacts associated with the destruction or modification of wetlands and direct or indirect support of new construction in wetlands, wherever there is a practical alternative. The assisted business must avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands which may result from such use.

Historic Preservation

- Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as amended) through completion of the procedures outlined in 36 CFR 800 and 36 CFR 63. Compliance with these procedures should include:

1. consulting with the State Historic Preservation Office (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that exist with a proposed WP RLF project's area of potential environmental impact, and/or to determine the need for professional archaeological, historical, or architectural inventory of potentially affected properties to determine whether they would qualify for register listing; and

2. consulting, as needed with the SHPO, Keeper of the National Register of Historic Places, and the Advisory Council on Historic Preservation to evaluate the significance of historic or prehistoric properties which could be affected by WP RLF work and to determine how to avoid or mitigate adverse effects to significant properties from project work.

Noise, Facility Siting

HUD Environmental Standards (24 CFR, Part 51, Environmental Criteria and Standards and 44 F.R. 40860-40866, July 12, 1979) which prohibit HUD support for most new construction of noise-sensitive uses is prohibited in general for projects with unacceptable noise exposures is discouraged for projects with normally unacceptable noise exposure. Additionally projects may not be located near facilities handling materials of an explosive or hazardous nature, or in airport clear zones.

Solid Waste

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.). The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.

Water Quality

- Safe Drinking Water Act of 1974 (42 U.S.C. Section 201, 300(f) et seq. and U.S.C. Section 349), as amended, particularly Section 1424(e) (42 U.S.C. Section 300H-303(e)) which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area; and

- Federal Water Pollution Control Act of 1972, as amended, including the Clear Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.

Wildlife

- Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical; and

- Fish and Wildlife Coordination Act of 1958, as amended, (U.S.C. 661 et seq.) which requires that wildlife conservation receives equal consideration and is coordinated with other features of water resource development programs.

Wild and Scenic Rivers

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271, et seq.). The purpose of this Act is to preserve selected rivers or sections of rivers in their free-flowing condition, to protect the water quality of such rivers and to fulfill other vital national conservation goals. Federal assistance by loan, grant, license or other mechanism can not be provided to water resources construction projects that would have a direct and adverse effect on any river included or designated for study or inclusion in the National Wild and Scenic River System.

I. REPAYMENT OF FUNDS

The assisted business expressly agrees to repay to the Department any funds advanced under this funding that the assisted business, or if applicable, its contractors, subcontractors, or sub-recipient entities, or any public or private agent or agency to which they delegate authority to carry out portions of the project, expends in violation of the terms of the statutes and regulations governing the EDA WP RLF program, or any applicable local, state, or federal requirements.

J. ACCOUNTING/AUDITING

1. The assisted business, in accordance with Section 18-4-311, MCA and other authorities, must maintain for the purposes of the project an accounting system of procedures and practices that conforms to the Generally Accepted Accounting Principles (GAAP).
2. The Department or any other legally authorized governmental entity or their authorized agents may, at any time during or up to three (3) years after the date of final loan payoff, conduct, in accordance with Sections 5-13-304 and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate administration and expenditure of the monies provided through the EDA WP RLF loan and to ensure the appropriate administration and delivery of services for the project.
3. The assisted business, for purposes of audit and other administrative activities, in accordance with 18-1-118, MCA and other authorities, must provide the Department, any other legally authorized governmental entity or their authorized agents access at any time to all of their respective records, material and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided for this project until the expiration of three (3) years after the date of final loan payoff. The Department and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

K. MONITORING

The Department or any of its authorized agents may monitor and inspect all phases and aspects of the assisted business' performance to determine compliance with the project as described in the assisted business' EDA WP RLF application, the proper use of Recovery Funds, and other technical and administrative requirements of the project, including the adequacy of the assisted business' records and accounts. The Department will advise the assisted business of any specific areas of concern and provide the assisted business opportunity to propose corrective actions acceptable to the Department.

L. COMPLIANCE WITH LAWS

In accordance with section 49-3-207, MCA, the applicant agrees that the hiring of persons for the project will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

M. FRAUD

The applicant shall promptly refer to the Department any credible evidence that a

principal, employee, agent, contractor, sub-grantee, sub-contractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving EDA WP RLF funds.

N. DEBARMENT

The applicant certifies and agrees to ensure during the project that neither it nor its principals, contractors, sub-contractors, or sub-recipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federally or state funded projects by any governmental department or agency. If the applicant cannot certify this statement, they must provide a written explanation for review by the Department.

O. SOLICITATION

The applicant agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, sub-contractors, or potential contractors and sub-contractors, who provide or propose services relating to the EDA WP RLF funded project.

P. SUBCONTRACTING

The assisted business agrees that all contracts and sub-contracts entered into for the completion of the activities described in the assisted business' EDA WP RLF application must indicate, in writing, that the project is being funded from the Montana Reinvestment Act of 2009, and require such contractors, sub-contractors, and sub-recipient entities to also comply with all applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, resolutions; and all administrative directives and procedures established by the Department, including the EDA WP RLF Program guidelines (August 2010).

II. CHECKLIST FOR APPLICATION PREPARATION FOR EDA WP RLF FUNDING

Note: This section is intended to be a checklist for all stages of application preparation, and may or may not include every item necessary to compile a complete funding application.

A. PRELIMINARY STEPS

<u>IN PROCESS</u>	<u>COMPLETED</u>	<u>N/A</u>	<u>ACTION</u>
			1. Business approaches WP RLF staff with a proposal.
			2. Does the project meet EDA WP RLF business thresholds?
			3. Minimum 2:1 leverage.
			4. Cost per job created or retained: ➤ No more than \$20,000 of funds per job created or retained
			5. Business drafts a Hiring and Retention Plan for WP RLF staff review.
			6. WP RLF staff and business owner make preliminary review of financials.
			7. The assisted business secures leveraged funds with commitments.
			8. WP RLF staff and business owner discuss expected timeline for business owner's need for money.
			9. Business reviews US Census Bureau's NAICS codes for proper business classification.
			10. Business ensures they have a Dun & Bradstreet DUNS number and that they are registered in the Central Contractor Registration database.
			11. For infrastructure projects: Preliminary architecture or engineering report has been completed and costs are estimated. Contact the MDOC for a copy of an outline for these services.

- **If the proposal is determined to be a good fit for the EDA WP RLF program, then the eligible applicant initiates the application process.**

B. FINAL APPLICATION PROCESS

<u>IN PROCESS</u>	<u>COMPLETED</u>	<u>N/A</u>	<u>ACTION</u>
			<p>1. Applications will be reviewed and analyzed by staff on a "first come, first served" basis, as determined by the date the full application is found to be complete by the Department. WP RLF staff will work closely with applicants during the review process to negotiate any changes and resolve issues identified during the review.</p> <p>The application is considered complete when all requirements have been met, the initial financial review indicates that the project has the potential to be financially feasible, and the project is properly structured. At that point WP RLF staff will prepare a report for the MDOC Loan Review Committee to be submitted along with the application.</p>
			2. The business finalizes leveraged funds and commitments.
			3. The business secures buy/sell agreement, if applicable.
			4. Environmental Assessment. The <i>Full Environmental Checklist</i> for EDA WP RLF Applications will be completed by WP RLF or Montana Department of Commerce staff, or other designated party before a release of funding can be granted. This activity will take place prior to loan closing.
			<p>5. Each EDA WP RLF applicant needs to review and/or complete the following required appendices; and document that required application areas as described in Chapter III are addressed.</p> <p>a. Appendix A – Complete the <i>Montana Department of Commerce EDA WP RLF Project Application Form</i></p>
			b. Appendix B – Complete a <i>Sources/Uses Form and Pro-Forma Balance Sheet</i> (or equivalent) – <u>AND</u> provide narrative on each funding source: status of commitment, availability, etc.
			c. Appendix C – Draft a <i>Hiring and Retention Plan</i> – (or equivalent).
			d. Appendix D – Complete a <i>Confidentiality and Non-Disclosure Agreement and Affidavit</i> .
			e. Appendix E – Submit <i>Business Plan</i> . Contents need to include the following: <i>See Chapter III, Business Plan</i> .
			i. Business Description
			ii. Management Information

			iii. Market Analysis
			iv. Financial Statements
			v. Financial Projections
			vi. Debt Schedule
			vii. Working Capital Needs
			viii. Personal Financial Statements/Tax Returns
			ix. Personal Credit Check Release (Appendix F)
			x. Private Sector Commitments
			5. Maps - Provide copies of maps showing location of assisted business/project area, and copy of FEMA map designating area of floodplain.
			6. Workers' Compensation Insurance Coverage – Provide proof of current workers' compensation insurance coverage.
			7. <u>Questions to ask before submittal of application:</u>
			a. Are project costs reasonable?
			b. Are all sources of project financing committed?
			c. Is the project financially feasible?
			d. To the extent practicable, the return on the owner's equity investment will not be unreasonably high?
			e. Are the leveraged funding sources committed, and are there letters of commitment from each source?
			f. Has the application demonstrated a need for EDA WP RLF assistance?
			g. Have all other sources for funding been explored and/or rejected (documented)?
			h. Is there sufficient equity and collateral to meet the lending requirements of private lending institutions?
			i. Can the business contribute sufficient equity to the project to meet the debt/net worth requirements of traditional lenders?
			j. Has the applicant considered the quality of the jobs and the wages they pay?
			k. Is the management experienced in the type of business activities it proposes, and has it demonstrated a capacity to

			successfully manage it?
			l. Are the projected earnings realistic and attainable? Are they supported by historical trends and industry norms? Do the projections indicate that cash flow will be sufficient to support the proposed increased debt?
			m. Are EDA WP RLF funds adequately secured with all reasonably available assets and/or personal guarantees?
			n. If the proposal involves the purchase of a business, has an appraisal been completed, and is there a buy/sell agreement in place?
			o. Does the application support a sound, well-reasoned proposal with a strong indication that the business will enjoy success if EDA WP RLF funds are received?
			p. Will the project be ready to proceed upon notification of tentative award of EDA WP RLF funds and be ready to begin immediately?
			8. <u>Three (3) copies of each application is required for submission:</u> a. <u>Three copies (one original and two copies) of the application must be submitted</u> to the WP RLF Program, Montana Office of Tourism and Business Development Division of the Montana Department of Commerce (see address on cover page) using the form in <i>Appendix A</i> , and <u>all</u> other appropriate documentation and appendices to fully respond to these application guidelines.

C. DECISION AND FUNDING AWARD

The review of the application will be expedited and the application's likelihood of being funded will increase if the business that will be assisted has adequately demonstrated that:

- All requirements are met or exceeded.
- The level of EDA WP RLF assistance is appropriate in relation to the public benefit expected to result from the project.
- The proposed management is experienced in the type of business activities proposed and has demonstrated the capacity to successfully manage the entity to be assisted.
- The application is complete as submitted and contains accurate information.

- The earnings projections submitted with the application are realistic and attainable, are supported by historical trends and industry norms, and indicate that the projected cash flow is sufficient to support the proposed increased debt.
- The EDA WP RLF funds would be adequately secured with all reasonably available assets and/or personal guarantees.
- The application documents a sound, well-reasoned proposal with a perceived strong chance for success if EDA WP RLF funds are received.
- The private lenders involved in the project have provided firm commitment of funds.
- The project is ready to proceed upon the notification of the tentative EDA WP RLF award and implementation will begin immediately.
- The application conclusively demonstrates that the project will support itself over time.
- The applicant has considered the quality of the job and the wage it pays. The Loan Review Committee will place greater weight on job quality and wages paid when evaluating EDA WP RLF projects for funding.
- Applications where viability may be questionable, or where the overall business plan or need for EDA WP RLF assistance is not adequately documented, may be restructured, renegotiated or not funded, depending on the severity and nature of the problems identified.

Applications that are received and accepted as complete, and have received staff analyses and recommendations, will be submitted to the MDOC Loan Review Committee at the earliest available time after the financial analysis is finished. Applications will be reviewed by the MDOC Loan Review Committee in the order in which they are submitted as complete applications to the Department. However, when more than one application is submitted to the Department in the same loan review cycle, they will be considered submitted simultaneously and will be reviewed and/or funded in the order of the dates on which the applications were determined to be complete.

The Committee will make a recommendation to the Director, who will make the final decision on project awards. If the application is approved, a letter of tentative award will be sent to the applicant stating the funding amount, interest rate and term, and any conditions that apply. If the application is not approved, a letter will be sent to the applicant stating the reasons for the decision. The date of the funding decision by the MDOC Loan Review Committee will be the date of funding award. Project activities must be completed within two (2) years from date of award. If the Director revises the recommendation by the MDOC Loan Review Committee, the Director will prepare a

written finding, consistent with the criteria established in these application guidelines, describing the rationale upon which the alternative decision was made.

➤ Applicants should also be aware that in most cases, it may take two (2) months or more before any funds will actually be disbursed to the business after the decision to award a loan has been made. This delay occurs because several activities must take place before funds can be released (start-up conditions). For example, the loan agreement between the recipient and Department must be prepared, a review of environmental factors must be conducted, and all the details for assuring proper management of the project and expenditure of EDA WP RLF funds must be finalized. Each award recipient will be given a list of start-up activities that need to be completed before loan closing in order to receive a release of EDA WP RLF funding.

It is absolutely essential that the assisted business not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date that all required start-up conditions, including signing the loan agreement, are satisfied by the recipient and approved in writing by the MDOC. It should be clear that expenses incurred by the assisted business, are incurred at their own risk. Unless prior written approval is given, it is absolutely essential that the business does not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date of the final execution of the loan agreement.

III. BUSINESS APPLICATION REQUIREMENTS

AREAS TO BE ADDRESSED WITH NARRATIVE IN EACH APPLICATION

For each area described below, include a clear heading in the application that corresponds to each title below and provide narrative for each, with identified accompanying Appendix.

A. MONTANA DEPARTMENT OF COMMERCE EDA WP RLF PROJECT APPLICATION FORM

Fill out the application form (**Appendix A**) and sign (business owner or chief executive officer). Include narrative and corresponding appendix for each of the following areas:

B. PROJECT BUDGET

In preparing its project budget, the applicant is required to identify the sources and uses of funds and the amounts to be contributed by each financial source.

Businesses should apply only for the level of funding necessary to carry out the project. Funding requests must be sufficient either by themselves or in combination with other proposed funding sources to complete the proposed activities within a two (2) year time period. Each applicant must propose a budget that is sufficient to assure effective and timely project completion. A budget form is included in **Appendix B, Sources and Uses Form and Pro-Forma Balance Sheet Format.**

► **No EDA WP RLF funds may be used for administrative costs**

► **If professional services are required (engineering, architectural, or project management) contact the MDOC for information on the procurement of professional services.**

A narrative justification for the specific proposed EDA WP RLF project activities must accompany the budget, including a breakdown of total project costs that identifies sources and amounts of all non-WP RLF funds to be used. The cost estimates for each item in the proposed budget must be explained in the narrative. For other sources of funds needed to complete the project, the status of these funds and how they will be used in conjunction with EDA WP RLF funds should also be described and documented (land and equipment appraisals, architects' cost estimates, etc.).

Applicants should be especially careful to ensure that all potential costs for carrying out the project are identified before submitting the application.

► **It is absolutely essential that the assisted business not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date that all required start-up conditions, including signing the loan agreement,**

are satisfied by the recipient and approved in writing by the MDOC. It should be clear that expenses incurred by the assisted business, are incurred at their own risk. Unless prior written approval is given, it is absolutely essential that the business does not incur costs or obligate funds, which are intended to be reimbursed with EDA WP RLF funds prior to the date of the final execution of the loan agreement.

C. NEED FOR EDA WP RLF ASSISTANCE

The MDOC must consider whether EDA WP RLF assistance to any nonprofit or for-profit business is the most effective use of EDA WP RLF funds, including the extent of the need for assistance and the amount of assistance to be provided in relation to the public benefit that would result. Applicants must show that all reasonable resources have been considered and are not available or sufficient to complete the project financing. Applicants must provide a narrative explaining what funding sources have been applied for and the status of those funds.

1. Evaluate All Project Costs

Applicants must verify all project costs and document how they were determined and by whom (land appraisal, engineer or architect prepared estimates, equipment lists and cost schedules, etc.). The applicant must determine the reasonableness and completeness of the cost estimates.

2. Verify and Maximize Private Funding Sources

It is the responsibility of the applicant to verify that all other reasonably available sources of private financing have been maximized for the project proposed. Other private sources such as banks, venture capital companies, or additional private equity should be sought and verified before finalizing the project budget and applying for EDA WP RLF funds.

Verification should consist of the following:

- The source of funds is committed;
- The terms and conditions of the committed funds are known;
- The source has the capacity to deliver; and
- All private sources are maximized for the given project. (No EDA WP RLF funds should substitute for available private funds.)

3. Make a Determination of Need for EDA WP RLF Assistance

The applicant must include the pro-forma balance sheet worksheet contained in **Appendix B** or other equivalent financial statements and cash flow analysis.

The applicant must demonstrate that the business to be assisted needs EDA WP RLF funding. There are several methods of determining the need for EDA WP RLF assistance:

- i. Are the annual earnings of the proposed project sufficient without EDA WP RLF assistance to meet the annual debt service requirement of a loan at market rate?
- ii. Is there sufficient equity and collateral to meet the lending requirements of private lending institutions? Can the assisted business contribute sufficient equity to the project to meet the debt/net worth requirements of traditional lenders? Does the business have sufficient collateral available to qualify for other financing?

The application should include letters from the private lending institutions contacted by the business for loans. The letters should document one or more of the following situations:

- The lender will not make any loan to the business;
- The lender can only lend a portion of the total project cost; or
- The lender will only participate if EDA WP RLF funds are involved in the project and states that its participation is contingent on EDA WP RLF funds.

4. Determining the EDA WP RLF Funding Amount

The applicant should determine the minimum amount of EDA WP RLF financial assistance necessary to stimulate private investment.

5. Private Sector Commitments

The applicant must document that each reasonable potential funding source is inappropriate, insufficient, or unavailable for the project. For example, if a private lending institution denies an application for a loan by the proposed business to be assisted, the letter of denial should be included in the application. If the owners of the business are not able to inject additional equity into the project, their personal financial statements should support that position.

Before submitting an application, the business should first request a loan (or loans) from lending institutions for the amount needed for the project after as much new private equity as possible has been committed to the project. If the lenders or investors are unable or unwilling to make a loan or investment for the amount needed to complete the project, the business should approach them with a financing package that includes EDA

WP RLF funds and request a loan contingent on EDA WP RLF funds being received.

All reasonable funding sources should be seriously and thoroughly investigated prior to applying for EDA WP RLF funds. EDA WP RLF funds should be requested only when the business can document that other funding sources are insufficient for the proposed project.

The amount of the financial gap should be quantified based on the pro forma. For example:

- If a lender can only provide a loan (contingent on EDA WP RLF) for a portion of the project costs, and all available private equity is invested into the project, the amount of the financing gap equals the amount remaining in the project that cannot be financed privately; or
- If a lender agrees to finance the project costs above the amount of private equity invested, but the annual debt service is higher than the projected cash flow from the project, the amount of the financing gap is equal to the amount of EDA WP RLF funds needed to lower the debt service so that a reasonable cash flow coverage is achieved and the project's financial feasibility is maintained.

Applicants must provide firm commitment letters from any private sector lenders or investors involved in the project. Such commitments should be binding, contingent only upon receipt of EDA WP RLF funds. All terms and conditions that apply to each funding source must be submitted as part of the application. Applications that include a loan guarantee from the Small Business Administration or USDA Rural Development must include the letter of authorization from the appropriate agency that contains the terms and conditions that apply to the loan. Terms and conditions for proposed debentures must be included. Letters of commitment from investors, owners and/or others providing assistance must be submitted with the application and must:

- Be on a letterhead of the firm and signed by an official of the firm authorized to commit the organization;
- Provide a clear statement of the firm's concept of the project (i.e., location, scope and cost);
- Specify the nature of the commitment (e.g., the amount of private commitment, amount of borrower's commitment, type and size of the project, number of jobs to be created or retained);
- State a willingness of the firm to sign a legally binding commitment upon confirmation of EDA WP RLF funding, and that the firm has reviewed the loan application and has approved its content. Letters of commitment from private financing institutions must specify the amount and type (for example, interim construction financing) of the loan being provided for the specific activity to be undertaken. The commitment should be binding, contingent only upon receipt of EDA WP RLF funds.

Applications should be submitted only for those projects that are ready to proceed, pending receipt of EDA WP RLF funds. **All project funding must be fully committed and available and the project must be ready to proceed within six months of award.**

D. DOCUMENTING JOBS

All jobs created or retained (if a job retention project) must be tracked during the course of an EDA WP RLF project for a period of two (2) years. All jobs must be converted into full-time equivalent positions. A full-time equivalent employee is an individual who is employed for 40 hours a week on the average, or a combination of individuals with combined hours of employment equal to 40 hours per week.

Permanent year-round jobs are the priority of the program. Only permanent jobs may be counted. Only jobs that the assisted business directly creates or retains within a 24-month period following the funding award will usually be counted toward this requirement. The Department cannot consider jobs created indirectly by an assisted activity.

If part-time or seasonal employment is proposed, the application must include an estimate of the number of hours to be worked each year for each proposed position. Temporary construction jobs, other temporary jobs, and seasonal jobs may not be counted.

For job creation projects, the application must include a payroll report showing the base level of employment at the time of application. The report must include a listing of all current employees, their date of hire, their hourly wage, and the number of hours worked. This will allow the Department to determine the actual number of FTE's created by the project. For existing firms, applicants must provide employment levels for the past year.

For job retention projects, the application must provide clear and objective evidence that, without EDA WP RLF assistance, the jobs would be lost. The application must include a payroll report showing the base level of employment at the time of application. The report must include a listing of all current employees, their date of hire, their hourly wage, and the number of hours worked. The business should provide an estimate of its expected turnover rate during the next two years.

Businesses must ensure that they maintain complete hiring records. Applicants should take into consideration equal opportunity and nondiscrimination laws to ensure that women and minorities are not excluded from participation, denied the benefit of, or subjected to discrimination under any program or activity funded in whole or in part with EDA WP RLF funds.

1. Hiring and Retention Plan

The primary goal of any EDA WP RLF funded activity is to increase year-round and permanent job opportunities for local residents.

Applicants must provide a Hiring and Retention Plan (see **Appendix C**) to ensure preferential recruitment and hiring of local workers. Assistance for developing a hiring and retention plan may be obtained from the local Job Service or the Human Resources Development Councils.

In the event of a funding award, the applicant's commitment to the Hiring and Retention Plan will be considered binding. A final Hiring and Retention Plan will be incorporated in the Loan Agreement between the business and the MDOC.

At a minimum the Hiring and Retention Plan must include the following:

- a. A breakdown of jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions.
- b. A breakdown of jobs to be created or retained, including the job titles and descriptions and the hourly wage. For applications proposing positions involving less than full-time employment, an estimate of the number of hours to be worked each week or the number of months to be worked each year for each position must be included.
- c. A timetable for creating the jobs, the total number of persons to be hired.
- d. An assurance that the business will comply with the equal opportunity and nondiscrimination laws.
- e. Procedures for outreach, recruitment, screening, selection, and placement of workers that will ensure maximum access for local residents.
- f. Written commitments from any agencies or organizations participating in the implementation of the hiring and retention plan (e.g., Job Service, HRDC, etc.).

Hiring goals should be reasonable and justified by the financial statements and projections. Claims for the number of jobs to be created or retained should be realistic and not inflated or too optimistic.

E. CONFIDENTIALITY AGREEMENT

All business plan information and financial exhibits will be considered confidential, for evaluation purposes only, and will not, except as required by law, be provided to any third person, firm, corporation, or public entity without the express written consent of the business. **The Department encourages businesses to execute a confidentiality agreement (Appendix D) with the Department and submit a subsequent affidavit outlining parts of the EDA WP RLF application it prefers to be held confidential. Assisted businesses are encouraged to work with WP RLF program staff when executing this agreement.**

F. PROJECT MANAGEMENT

As part of its application, each applicant must submit a brief narrative that explains who will oversee the following:

1. Assuring proper management of the EDA WP RLF project, including financial management of funds, compliance with program requirements, effective and timely start-up and completion of project activities; and

2. Responsibility for day-to-day management (or position descriptions developed for these persons) and any contracted services to be used in carrying out the project.

➤ **If the applicant is a previous or current funding recipient under an MDOC funding program, the applicant's performance of project management responsibilities must be acceptable in order for the applicant to receive funding under the EDA WP RLF program. Applicants that are currently administering projects funded with MDOC programs will be eligible for application if:**

- **The MDOC determines that current or previously funded projects are being administered in an acceptable manner, and there are no outstanding findings from audit reports; and**
- **Current or previously funded projects are consistent with implementation schedules contained in corresponding contracts with the Department.**

To be awarded funding under the EDA WP RLF Program, an applicant must demonstrate the management capacity to undertake and satisfactorily complete the project it is proposing. An applicant is assumed to have the capacity to undertake the proposed project unless available information raises a question concerning an applicant's capacity. If any question arises during the evaluation of the application, the MDOC may request additional information.

If an applicant does not believe that it currently has the capacity to manage an EDA WP RLF project, it may propose to hire administrative staff or contract for administrative services with a consultant or nonprofit agency, after funding award. In all cases, the applicant assumes direct responsibility for proper financial management of EDA WP RLF funds awarded to it.

➤ EDA WP RLF funding can not be used for grant application preparation or project administration costs.

G. ACQUISITION

Businesses proposing to use EDA WP RLF-fund to acquire property must have an appraisal done to determine fair market value and make a written offer to purchase. A Buy-Sell agreement should be in place and submitted with the EDA WP RLF

application. Please contact the MDOC for more information if considering acquiring property using EDA WP RLF funds.

H. FEDERAL LABOR STANDARDS

Federal labor requirements should be given careful consideration when planning EDA WP RLF funded projects. The Federal Contract Work Hours and Safety Standards Act, Copeland "Anti-Kickback" Act, and the Davis-Bacon Act will probably apply to most projects involving the use of EDA WP RLF funds for contracted labor for construction, remodeling, site development, extensive equipment installation or other similar activity for contracts more than \$2,000. The Davis-Bacon Act requires the payment of prevailing wage rates (usually comparable to union scale) on construction paid for in whole or in part with EDA WP RLF funds.

Determining the applicability of Davis-Bacon wage rates to a project can be complex. Contact the MDOC, Montana Office of Tourism and Business Development Division during the planning stages for a proposed project for guidance and copies of the applicable wage rates and requirements.

The higher labor costs associated with Davis-Bacon wage rates, if applicable to a project, must be considered when calculating project costs and when obtaining estimates from potential contractors.

I. REQUIRED REGISTRATION NUMBERS

1. **NAICS Code** – Businesses must determine its appropriate industry code. This code will be reported on ***Appendix A, Montana Department of Commerce EDA WP RLF Application Form***, and other EDA WP RLF reporting forms. NAICS codes are used by the US Census Bureau for industry classification. Please refer to the following website for a listing of current codes, or contact EDA WP RLF staff for assistance:

<http://www.census.gov/eos/www/naics/>

2. **DUNS Number** – Businesses must have a Dun and Bradstreet Data Universal Numbering System (DUNS) Number. Please refer to the following website to register for a DUNS Number:

<http://www.dnb.com/us/>

3. **Central Contractor Registration (CCR)** – Businesses must be registered in the Central Contractor Registration database. For information on registering for a CCR number, please refer to the following website:

<http://www.sam.gov>

J. BUSINESS PLAN

The business plan components contained in this section **are required** for EDA WP RLF applications.

Each applicant must submit a business plan for each business or entity to receive direct assistance, whether for-profit or nonprofit. Each business plan must contain sufficient information for the Department to obtain an adequate understanding of the business to be assisted, including products or services, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. The EDA WP RLF Program has developed a brief Business Plan Outline, which may be helpful in developing a business plan for the application (**Appendix E**).

All business plan information and financial exhibits will be considered confidential, for evaluation purposes only, and will not, except as required by law, be provided to any third person, firm, corporation, or public entity without the express written consent of the business. **The Department encourages businesses to execute a confidentiality agreement (Appendix D) with the Department and submit a subsequent affidavit outlining parts of the EDA WP RLF application it prefers to be held confidential. Assisted businesses are encouraged to work with WP RLF program staff when executing this agreement.**

The business plan must include the following elements and must provide sufficient detail for adequate analysis:

1. Business Description

Include a description of the company or enterprise and an explanation of the products or services offered.

2. Management Information

Provide the names, titles, and resumes of each principal to be responsible for the management of the business.

3. Market Analysis

Discuss the present or proposed market area and share, with future projections, and provide an explanation of how the information was developed (for example, market surveys). Document any identified potential markets (for example, contracts, letters, or other evidence of interest in the product(s) by potential buyers or distributors), especially if sales projections show annual increases exceeding 25%.

4. Sources and Uses of All Funding

This section of the application should discuss the source, use, and terms of all funds to be included in the project. Use the form in **Appendix B**, to list the sources and uses of all funding for the project. A description of all aspects of the proposed assistance (i.e., loan terms, security, etc.), and the rationale for each must be included with the application.

5. Financial Exhibits

The business must be able to show that projected cash flow will be sufficient to cover projected debt service and that a positive net worth can be attained. The projections must include a narrative explanation of how the figures and assumptions were derived with special emphasis on any changes in major assumptions from existing conditions (i.e., changes in cost of goods sold and general administrative expenses as a percentage of sales, or if sales increases exceed 25% annually). Special care should be taken to include increased labor costs related to achieving the hiring goals contained in the hiring and retention plan.

The business plan must include the following financial exhibits:

a. Financial Statements

For an existing business, provide financial statements for the two (2) most recent years of operation to include the following:

- Balance Sheets
- Profit and Loss Statements
- Cash Flow Statements

Current financial statements compiled or reviewed by an independent certified public accountant, with full disclosure notes, are required for businesses that have been in operation for more than one complete business fiscal year. In addition to the CPA-prepared year-end financial statements, internally prepared interim financial statements will also be accepted. A responsible officer of the business must sign all financial information. Financial statements must also include a current Aging of Accounts Receivable and Payable. There should not be significant gaps (not more than 90 days) between the historical statements and the projected statements. The projections should use the same fiscal year periods as the historical financial statements. Applications that contain appropriate, updated, accurate financial information can be processed much more quickly than incomplete applications that require Department requests for additional information.

b. Financial Projections

Provide the following projections for two (2) years:

- Balance Sheets (sample form, **Appendix B-a**)
- Profit and Loss Statements
- Cash Flow Statements

Earnings projections must include a projected monthly cash flow analysis for at least one year and until the break-even point is projected to be reached by the business. For a business that experiences regular or occasional cyclical variations in cash flow, provide a narrative explanation of the reason(s) for the occurrence of the cycles. Also, explain the effect, if any, on the business's ability to meet its debt obligations identified in the existing and projected debt schedules.

c. Debt Schedule

Provide descriptions of all existing and projected debts and lenders, annual debt service amounts, and any related loan requirements. Financial statements should include current maturities of long-term debt and adjusted principal balances. All debt sources must be identified independently and not combined into one long-term debt number on the balance sheet. Principal and interest payments for at least two (2) years should be included for all sources.

d. Working Capital Needs

Provide information on working capital needs and verify through cash flow projections, explaining changes in inventory and receivables.

e. Requirements for Business Owners with a 20% or Greater Ownership

- Personal Financial Statements and Tax Returns
Personal financial statements and tax returns are generally required for all owners with 20% or more ownership in the business to be assisted. The Department also requires personal or corporate income tax returns for all affiliated businesses.

The Montana Department of Commerce and the Montana Department of Revenue may share financial and tax information relating to this application.

- Personal Guarantees
Personal guarantees will be required for owners with a 20% or more ownership at the discretion of the Loan Review Committee.
- Personal Credit Check Release
The principal owners of the business, as defined above, must provide a release allowing for a personal credit history check by the Department as part of the application review, (**Appendix F**).

Applicants should include any other information that may be helpful in documenting the economic viability of the project.

K. MAPS

Each application must include two (2) clearly legible maps:

1. One that documents the applicant's political jurisdiction and the proposed project area. Assisted business or project area must be indicated with a highlighter or clearly marked with a pen, and
2. Applicants must also submit a Federal Emergency Management Agency (FEMA) map designating whether or not the project area is within or outside a designated flood plain. Assisted business or project area must be indicated with a highlighter or clearly marked with a pen.

L. WORKERS' COMPENSATION INSURANCE COVERAGE

Entities receiving assistance from the Montana Department of Commerce are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees can be employees of the State. This insurance/exemption must be valid for the entire term of the two (2) year period for activities. A renewal document must be sent to the Montana Wood Products Revolving Loan Fund Program, Montana Department of Commerce, PO Box 200505, Helena, Montana, 59620-0505 upon expiration.

Proof of coverage must be sent to the Department with the business' application for EDA WP RLF assistance. Loans will not be closed without proof of coverage.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

APPENDICES

- A. Appendix A Montana Department of Commerce EDA WP RLF Application Form**
- B. Appendix B Sources and Uses Form
Appendix B-a Balance Sheet Example**
- C. Appendix C Hiring and Retention Plan**
- D. Appendix D Confidentiality Agreement and Affidavit**
- E. Appendix E Sample Business Plan**
- F. Appendix F Credit Check Release**